

*special*

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS

ATTORNEY GENERAL

Honorable L. Mackechney, Superintendent
Wichita Falls State Hospital
Box 300
Wichita Falls, Texas

Dear Dr. Mackechney:

Opinion No. 0-5817

Re: Proper county of jurisdiction for re-admission of a voluntary patient in the State Hospital for the insane upon the discharge of such voluntary patient.

You request an opinion upon the above subject matter in the following letter:

"We have been instructed by the Board of Control to discharge all our voluntary patients that have been here longer than ninety days, or have them readmitted by jury trial.

"Miss Nellie Grace Cloyd was admitted to this institution June 20, 1936, as a voluntary patient, and she gave as her county Tarrant. We wrote Judge C. O. Kraft of this matter, to which he replied, 'In as much as this patient's relatives do not now live in Tarrant County, and the patient is not here, I doubt if I have jurisdiction to try the case in this county.'

"Our next letter was written to Mr. H.S. Cloyd of Hereford, Texas, who is the father of our patient, and ask him to have his daughter re-committed by jury trial. Judge Fred

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W. Baird of Deaf Smith County informs us that since Miss Cloyd did not accompany her father to Deaf Smith County when he established residence there, that he would have no jurisdiction in this case.

"We are at a loss as to what county should try this patient. Not only have we had this trouble with Miss Cloyd's case, but with several of our other voluntary patients."

Your inquiry is answered by the provisions of Article 5561a, Revised Civil Statutes, Vernon's Codification, as follows:

"If information in writing under oath be given to any county judge that any person in his county, not charged with a criminal offense, is a person of unsound mind, and that the welfare of either such person or any other person or persons requires that he be placed under restraint, and such county judge shall believe such information to be true, he shall forthwith issue a warrant for the apprehension of such person, or, if such like information be given to any justice of the peace in such county, said justice may issue a warrant for the apprehension of said person, making said complaint and warrant returnable to the county court of said county, and said county judge in either event shall fix a time and place for the hearing and determination of the matter, either in term time or in vacation, which place shall be either at the court house of the county, or at the residence of the person named, or at any other place in the county, as the county judge may deem best for such hearing. Notice of the time, place and

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purpose of such hearing shall be served upon the person charged, such notice to be under the hand and seal of the county clerk of said county, and served and returned by the sheriff or a constable of such county, and the return to state the time and place of service. Such notice shall be served not less than three days prior to the day of hearing."

This Section, when considered as it should be in the light of the remaining portion of the Article, indicates that the proceeding should be instituted and maintained in the county wherein the person sought to be adjudged is then to be found.

The jurisdiction is thus given to the county wherein such person may be found, in the interest of expediting the matter not only for the sake of the individual primarily concerned, but likewise of others as well.

In Opinion No. 0-4758 this Department held that "the person sought to be charged with lunacy must be physically present within the county (of the proceeding) at the time of the making of the information."

It is not, therefore, a question of the domicile, legal or actual residence whatsoever of the person thus charged; on the contrary, it is a question of the presence of such person within the jurisdiction -- county -- of the court whose duty it is to determine such question.

Very truly yours

ATTORNEY GENERAL OF TEXAS



BY *John S. Sullivan* *John S. Sullivan*
CHAIRMAN

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